

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TOMAS LEAL

VS.

JOHN DOE #1 A/K/A “WESTON” AND
BYRON TRUCKING, INC.

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CIVIL ACTION NO. 1:21-cv-225

JURY TRIAL REQUESTED

DEFENDANT BYRON TRUCKING, INC.’S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Byron Trucking, Inc. files this, its Notice of Removal pursuant to 28 U.S.C. §§1441 and 1446, showing the following basis for removal.

INTRODUCTION

1. Plaintiff Tomas Leal filed Plaintiff’s Original Petition against Defendants initiating a lawsuit under Cause No. 21-0228, pending in the 22nd Judicial District Court of Hays County, Texas.

2. Defendant Byron Trucking, Inc. is a corporation and misidentified as an LLC in Plaintiff’s Original Petition, was served with the Plaintiff’s Original Petition by and through its registered agent, Cassidy Nee, All American Agents of Process on February 8, 2021.

3. Defendant WESTIN SCHREPPFER, (incorrectly identified as Defendant John Doe #1 a/k/a “Weston”), has not been served. 28 U.S.C. §1446(b)(2)(A). *Knight v. Mooring Capital Fund, LLC*, 749 F.3d 1180-84 (10th Cir. 2014); *see Harper v. AutoAlliance Int’l, Inc.*, 392 F.3d 195, 201 (6th Cir. 2004). Plaintiff incorrectly attempted to serve this defendant identified only as John Doe #1 a/k/a “Weston” through the Registered Agent for Service of process for Byron Trucking, Inc., which is improper under Texas Rule of Civil Procedure 106.

4. This original Notice of Removal is filed within thirty days of service upon Byron Trucking, Inc. the statutory period for removal as required under 28 U.S.C. §1446(b).

JURISDICTION

5. This court has removal jurisdiction over this lawsuit pursuant to 28 U.S.C. §§1441 and 1446, and based upon diversity of citizenship under 28 U.S.C. §1332. Plaintiff is domiciled in Texas and is a citizen of that state. Defendant John Doe #1 a/k/a “Weston” is domiciled in Minnesota and is a citizen of that state. Defendant Byron Trucking, Inc. is a corporation and specifically denies for all intents and purposes that it is an LLC as identified by Plaintiff in his Original Petition and as a corporation has no directors and/or members to identify. Defendant Byron Trucking, Inc. is incorporated in the state of Minnesota with its principal place of business located in Mantorville, Minnesota. Therefore, Byron Trucking, Inc. is a citizen of Minnesota for the purpose of diversity jurisdiction.

6. Because WESTIN SCHREPFER, (incorrectly referred to as Defendant John Doe #1 a/k/a “Weston”), was improperly served and is therefore not joined to this lawsuit, and his written consent is not required.

7. Complete diversity exists between Plaintiff, a citizen of Texas, and Defendant Byron Trucking, Inc., a citizen of Minnesota. Additionally, Plaintiff alleges and seeks recovery of damages in an amount in excess of \$1,000,000.00, therefore, the amount in controversy exceeds \$75,000, excluding interest and costs, consistent with 28 U.S.C. §1332(a).

8. All Defendants who have been properly joined and served, join in or consent to the removal of this case to federal court as required by 28 U.S.C. §1446(b)(2)(A).

9. All pleadings, process, orders, and other filings in the state court action in the possession of defendants are attached to this notice as required by 28 U.S.C. §1446(a).

10. Venue is proper in this district and division under 28 U.S.C. §1441(a) because the state court where the action has been pending is located in this district and division.

11. Defendant Byron Trucking, Inc. will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

JURY DEMAND

12. Plaintiff did demand a jury in the state court suit, and defendant requests one now.

CONCLUSION

For these reasons, Defendant Byron Trucking, Inc., therefore gives notice of its removal of this lawsuit to this Court, and an automatic stay of further proceedings in state district court.

Respectfully submitted,

RAMEY, CHANDLER, QUINN & ZITO, P.C.

/s/ Robert L. Ramey

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**ATTORNEYS FOR DEFENDANT,
BYRON TRUCKING, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been provided to all counsel of record in accordance with FED. R. CIV. P. 5(b) on March 10, 2021.

Gregory S. Simmons

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/s/ Robert L. Ramey

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